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MEMORANDUM

June 3, 2008

TO: Jared DeMarinis

FROM: Mark J. Davis

SUBJECT: Reporting of Contributions Under Chapter 620

You have asked whether persons making expenditures to ballot issue committees and Section 527 organizations are subject to the disclosure requirements of Chapter 620, Laws of Maryland 2008 (Senate Bill 755). Although the issue is not entirely free from doubt, I believe that the Chapter 620's disclosure requirements do not apply to these persons because their expenditures are contributions to the committees and organizations, not direct expenditures to promote the success or defeat of the slots constitutional amendment.

Chapter 620

Effective January 1, 2008, Section 10, Chapter 4 of the Special Session Laws of 2007 required a ballot issue committee formed to promote the success or defeat of the slot machine gaming constitutional amendment to file an additional campaign finance report on or before the fourth Friday immediately preceding the 2008 general election. In addition, Section 10 required that a corporation that cumulatively spends more than \$10,000 on campaign material to promote the success or defeat of the referendum file a campaign finance report on the same dates as a ballot issue committee and to provide the "authority line" information required by Election Law Article ("EL") §13-401 on all campaign material it publishes or distributes relating to the referendum.

Chapter 620 amends Section 10 in several respects. First, it expands the \$10,000 reporting requirement to a "person," which is defined to include "a corporation, partnership, business trust, or limited liability corporation," instead of only a "corporation." See Fiscal and Policy Note, Dept. of Legislative Services, SB 755. Second, within 7 days of attaining the \$10,000 expenditure threshold, a person must file, in addition to the reports required of a ballot issue committee, a report including the name and address of the person, the individual responsible for the expenditures, and whether the person supports or opposes the amendment. Finally, the bill excepts from the authority

line requirement an individual who uses personal funds and acts independently of others in making expenditures relating to the referendum.

Definitions

Chapter 620 defines “expenditure” to mean “a gift, transfer, disbursement, or promise of money or a thing of value by or on behalf of a campaign finance entity or person to promote the success or defeat of the constitutional amendment proposed by Chapter 5 (H.B. 4) of the Acts of the General Assembly of the Special Session of 2007.” *Compare* EL §1-101(y) (defining “expenditure” to include “a gift, transfer, disbursement, or promise of money or a thing of value by or on behalf of a *campaign finance entity*”)¹ (emphasis supplied).

A “ballot issue committee” is defined as “a political committee that is formed to promote the success or defeat of a question to be submitted to a vote at any election.”² EL §1-101(f).

A “Section 527 organization” is a tax-exempt group organized under section 527 of the Internal Revenue Code to raise money for political activities including voter mobilization efforts, issue advocacy and the like. Currently, the Federal Elections Commission only requires a 527 group to file regular disclosure reports if it is a political party or political action committee (PAC) that engages in either activities expressly advocating the election or defeat of a federal candidate, or in electioneering communications. By contrast, 527s run by special interest groups raise unlimited amounts of “soft” money which they may use for voter mobilization and issue advocacy, but not for efforts that expressly advocate the election or defeat of a federal candidate.³ The Election Law Article does not recognize the special status of a 527 organization; a 527 which conducts campaign finance activity may be required, like a ballot issue committee, to register and file reports under Title 13, unless its primary purpose is making independent expenditures.⁴

¹ The definition of “contribution” is similar, except that the consideration flows *to* a campaign finance entity rather than, as in the case of an expenditure, *by or on behalf of* a campaign finance entity. *See* EL §1-101(o) (“the gift or transfer, or promise of a gift or transfer, or money or other thing of value *to* a campaign finance entity to promote or assist in the promotion of the success or defeat of a candidate, political party, or question”) (emphasis supplied).

² Campaign contribution limits do not apply to ballot issue committees. EL §13-226(a)(1). Moreover, the transfers limit does not apply to transfer from a campaign finance to a ballot issue committee. EL §13-227(b).

³ *See* <http://www.opensecrets.org/527s/types.php>

⁴ Independent expenditures are made on behalf of candidates, not ballot questions. An “independent expenditure” means “an expenditure by a person to aid or promote the success or defeat of a *candidate* if the expenditure is not made in coordination with, or at the request or

Analysis

You have asked whether the disclosure requirements of Chapter 620 apply to a person making expenditures to a ballot issue committee or to a Section 527 organization. In my view, a person who is making expenditures to such a committee or organization is not making a direct expenditure to promote the success or defeat of the slots referendum. The General Assembly only intended to require reporting by persons who make direct expenditures to promote the success or defeat of the slots referendum.

A person who makes expenditures to a ballot issue committee or Section 527 organization has no direct control over how the funds are ultimately spent. The committee or organization may legitimately use such a contribution for purposes other than the success or defeat of the slots question; for example, they may use the contribution for ongoing administrative expenses. Moreover, a Section 527 organization may have interests far broader than the slots referendum and may decide to use a contribution for those other interests.

By contrast, a person who publishes or distributes his or her own campaign material directly controls the use of the funds. The Attorney General recently discussed the importance of a donor's intent in concluding that a campaign finance entity may not make expenditures to the administrative account of a political party. 92 *Opinions of the Attorney General* 92, 99-100 (2007) (noting that contributions to a PAC are chargeable against contribution limits because "the PAC decides how the funds 'can best be spent for nonelectoral purposes' and the donor has no control over how the funds are spent") (quoting 70 *Opinions of the Attorney General* 96, 102 (1985)). In my view, the General Assembly intended to require disclosures by a person who directly expends funds on the slots referendum.

A ballot issue committee is already required to report contributions of persons who make expenditures by or on its behalf. See EL §§ 13-304, 13-309, 13-306. Thus, it is unlikely that the General Assembly intended to require the persons defined by Chapter 620 to file another report of the same expenditures. Admittedly, this rationale does not apply in the case of a contribution to a Section 527 organization that is not a ballot issue committee and is not required to make reports required by Title 13. But there is no indication from the legislative history that the General Assembly intended require disclosure of these kinds of contributions to the 527s.

suggestion of, the *candidate*, a campaign finance entity of the *candidate*, or an agent of the *candidate*." EL §1-101(z) (emphasis supplied); see also Memorandum of Mark J. Davis to Jared DeMarinis (January 6, 2006) (noting that a person or group making independent expenditures is not likely required to register under Title 13 when the person or group's major purpose is issue advocacy; it does not make direct contributions to a candidate; and it does not coordinate its expenditures with a candidate's).

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Conclusion

A person who makes expenditures to a ballot issue committee or a Section 527 organization is not making a direct expenditure to promote the success or defeat of the slots referendum. The General Assembly only intended to requiring reporting by persons who make direct expenditures to promote the success or defeat of the slots referendum. Thus, a person who makes expenditures to a ballot issue committee or a Section 527 organization is not required to file the reports required by Chapter 620.

cc: Linda Lamone
Ross Goldstein